CWP No. 376 of 2007

12.11.2007 Present: Mr. Neel Kamal Sood, counsel for the petitioner.

Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for the respondents.

This writ petition is directed against the order of the Labour Commissioner, Himachal Pradesh (respondent No. 4 herein) who has rejected the claim of the petitioner. The petitioner claimed himself to be a workman and issued a demand notice against his employer and prayed that the matter be sent to the Conciliation Officer and in case conciliation proceeding fails, then a reference be made to the Labour Court. The Labour Commissioner vide impugned order has rejected the prayer for making reference on the following ground:

> "After careful examination of the above report, it is found that you have not completed 240 days continuously in preceding 12 months prior to your termination as the alleged dispute is frivolous and vexatious. Therefore, there is no justification of making reference to Labour Court."

We are clearly of the view that the Labour Commissioner could not have gone into the merits of the case, as the law is well established that under Section 10 of the Industrial Disputes Act, the State Government cannot examine the merits of the case. At best, the State Government can only go into the question whether the claim is frivolous or is absolutely stale, but it cannot delve into merits of the dispute. Once a dispute subsists then the Labour Commissioner is bound to make a reference. We are,

therefore, of the considered opinion that the order under challenge cannot withstand legal scrutiny. The same is accordingly set aside and the matter is remanded to the Labour Commissioner. The Labour Commissioner is directed to make a reference to the Labour Court within a period of four weeks from the receipt of a copy of this order.

In view of the above, the writ petition stands disposed of. No costs.

(Deepak Gupta),J.

November 12, 2007 **(V.K. Ahuja), J.**
(BSS)